TENG HUNG PING

v.

HOAN SIEW CHOO @ FAN SIEW CHOO & 2 ORS.

HIGH COURT, KUCHING
TUAN RICHARD MALANJUM JC
[ORIGINATING SUMMONS
NO. KG.180 OF 1992/(III)]
12 APRIL 1993

LAND LAW: Application for removal of caveat - Whether plaintiff has locus standi to make the application - Section 177(1) Sarawak Land Code.

The plaintiff, as administrator of the estate of Ting Chung Ho, applied for the removal of a caveat lodged by the defendants on land of which they together with the deceased were the registered co-proprietors.

The defendants made a preliminary objection with regard to the *locus standi* of the plaintiff in making the application to remove the caveat lodged against the land pursuant to s.177(1) of the Sarawak Land Code (the Code).

Held:

[1] Section 177(1) of the Code requires that an application for the removal of a caveat must be made by a registered proprietor or a person holding a registered interest or estate in the land.

[2] The plaintiff as administrator of the estate of the deceased had no such interest and as such had no *locus standi* to make the application for the removal of the caveat under s.177(1) of the Code.

[Plaintiff's application for removal of caveat struck out].

Cases referred to:

Loh Ing Kiong & Anor. v. Chieng Yong Tiong (unreported) ***(foll)***

David Gramong v. Rasit bin Tar [1991] 3 CLJ 2143 ***(refd)***

Boswell v. Francis [1974] 2 NZLR 488 ***(refd)***

Malayan Banking Bhd. v. Pendaftar Hakmilik Negeri Pahang & Anor. [1991] 1 MLJ 119 / [1990] 2 CLJ 999 ***(refd)***

Cheong Kong Enterprise Co. Sdn. Bhd. v. Foong Seong Mines Ltd. & Ors. [1969] 2 MLJ 246 ***(refd)***

Philip ak. Jimmy v. Ng Moi Kiew (Sibu Civil Suit No. 35 of 1979) (Unreported) ***(refd)***

Legislation referred to:

Administration of the Estates Ordinance (Cap. 80), s. 17

National Land Code, s. 321(3)(b)

National Land Code (Cap. 138), ss. 326(1), 327

New Zealand Land Transfer Act 1952, s. 143(1)

Sarawak Land Code (Cap. 81), ss. 169, 177(1), 176, 178

Other sources referred to:

Caveats under the Sarawak Land Code (Cap. 81) Law and Practice, p. 80

For the plaintiff - Irene Chang; M/s. Idris & Co.

For the defendants - John Lim; M/s. Tiong, Lim, Wong & Co.

JUDGMENT

Richard Malanjum JC:

This is an application by the plaintiff by way of originating summons for the following relief, namely:

1. A Declaration that the plaintiff is the Administrator of the estate of Ting Chung Ho (Deceased), which includes all that 100/800ths undivided right title share and interest in each of the following two parcels of land:

   (a) all the parcel of land situated at Sungai Ketup, Samarahan River Asajaya, containing an area of 114.93 hectares, more or less, and described and comprised in Kuching Lease of Crown Land No. 1951; and

   (b) all that parcel of land situated at Sungai Ketup, Samarahan River Asajaya, containing an area of 57.8 hectares, more or less, and described as Lot 2170, Block 59, Muara Tuang Land District and comprises in Kuching Lease of Crown Land No. 1959

   (hereinafter jointly referred to as "the said Land");

2. A Declaration that as Administrator, the plaintiff has to administer the Estate of Ting Chung Ho (Deceased) as in accordance with s. 17 of the Administration of the Estates Ordinance (Cap. 80); and

3. A Declaration that the plaintiff as Administrator has the right to the possession of the documents of title and the quit rent booklets of the said Land; and

4. An Order that the defendants, either by themselves or by their agent or Advocates, Messrs. Tiong, Lim, Wong & Co. Advocates of Kuching, surrender the documents of title and the quit rent booklets to the said Land in order that the plaintiff may carry out his duties as the Administrator of the said Estate; and

5. A Declaration that the defendants do not have any caveatable interest over or against the said Land or any part thereof;
6. An Order that the defendants forthwith remove the Caveat registered as Instrument No. L. 182/1992 at the Samarahan Land Registry Office lodged against the said Land;
7. An Order that the defendants do pay the plaintiff for special damages of Hong Kong Dollar of Seven Thousand Four Hundred and Twenty (HK$7,420) only;
8. An Order for general damages to be assessed against the defendants for having wrongfully caveated the said Land;
9. Costs; and
10. Further or other relief as this Honourable Court deems fit and just.

At the commencement of the hearing learned Counsel for the defendants conceded for the relief under prayers 1 to 4 to be made in favour of the plaintiff.

But learned Counsel for the defendant also raised a preliminary objection with regard to the *locus standi* of the plaintiff in making the application to remove the caveat lodged against the said Land pursuant to s. 177(1) of the Sarawak Land Code (Cap. 81) (hereinafter called "the said Code").

It is not in dispute that the plaintiff is only the administrator of the estate of Ting Chung Ho (deceased) by virtue of the Letters of Administration dated 3 June 1992 issued by the office of the Public Trustee Sarawak at Kuching. It is also not in dispute that prior to his death the deceased was the registered co-proprietor of 100/800ths undivided right title share and interest in the said land.

The defendants are and were the co-proprietors of the said land.

Prior to the granting of the Letters of Administration to the plaintiff the former administrator of the estate of the deceased was one Teng Hung Sing. But on the 27 April 1992 the application for revocation of the Letters of Administration including the supplementary Letters of Administration to the said Teng Hung Sing was granted. Subsequently the plaintiff became the new administrator of the estate of the deceased.

The plaintiff alleged that sometime at the beginning of July 1992 he received a notice from the Assistant Registrar of the Samarahan Land Registry given under s. 176 of the said Code that the defendants have lodged a caveat *vide* Instrument No. L. 182/1992 dated the 17 February 1992 against the said Land. The basis of the said caveat was an agreement dated 12 January 1987 entered into between the defendants and third parties and the said Teng Hung Sing while as the administrator of the estate of the deceased. Indeed the existence of the caveat is preventing the plaintiff as administrator of the estate of the deceased to effect the registration of the Application for Transmission and the Memorandum of Transfer in respect of the said Land. For that reason the plaintiff is applying to have the caveat removed.

However learned Counsel for the defendants contended that the plaintiff has no *locus standi* to make the application for the removal of the caveat in view of the provision of s. 177(1) of the said Code.

Section 177(1) of the said Code provides:

> Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.

It is the contention of the learned Counsel for the defendants that the plaintiff as only an administrator of the estate he holds no registered interest or estate in the said Land unless and until an application for transmission under s. 169 of the said Code has been obtained. It is to be noted however that in this case the application for the registration of the transmission itself is being prevented by the existence of the caveat.

In reply to this preliminary objection learned Counsel for the plaintiff besides citing several authorities argued that the plaintiff, being the administrator of the estate of the deceased, has stepped into the shoes of the proprietor, in this case the deceased as a co-proprietor of the said Land. Learned Counsel also submitted that the principle of law referred to by learned Counsel for the defendants is only *obiter*. Further it was contended that by virtue of the Letters of Administration the plaintiff as the administrator has a registered interest on the said Land.

First, I must state that the case of *Loh Ing Kiong & Anor. v Chieng Yong Tiong* (*unreported and under Sibu OM No. 2 of 1982*) cited by learned Counsel for the defendants dealt with the issue of *locus standi* and s. 177(1) of the said Code. His Lordship, Chong Siew Fai J. in his judgment said this:

> Section 177(1) of the Land Code provides, *inter alia*, that any person "having a registered estate or interest" in the estate or interest against which a caveat has been lodged may apply for its removal. In the instant case the applicants entered an agreement (Exh. "A" annexed to the applicants' affidavit made on 30 July 1982) whereby subject to fulfilment of the terms and conditions therein, the sublot in question is, in due course, to be transferred to them or their nominees. To that extent the applicants can be said to have an interest in the land. But have they a "registered" interest? On the material before me, there is no evidence that they have a "registered" interest or estate. I am also unable to agree that the word "registered" can be read to mean "registrable". In the circumstance, the applicants have not established themselves to fall within s. 177(1) of the Land Code and therefore have no *locus standi* to apply for the removal of the caveat thereunder.

The conclusion arrived at on the issue was one of the grounds in dismissing the application of the applicants in that case. Accordingly, I do not think that the principle of law as expounded by the Court in that case is merely an *obiter* as contended by the learned Counsel for the plaintiff. The issue therefore is whether this Court should agree with the principle of law as stated in that case.

Having read the judgment of that case and in view of the provision of s. 177(1) of the said Code I entirely agree with the interpretation of s. 177(1) as stated thereof. The element of "registered interest or estate" is essential under the said s. 177(1). As observed in the case of *David Gramong v. Rasit bin Tar* [1991] 3 CLJ 2143 a registered power of attorney has satisfied the requirement of 'registered interest' under s. 177(1) of the said Code.

A similar view was made by Cooke J. in the case of *Boswell v. Francis* [1974] 2 NZLR 488 when he was considering s. 143 of the New Zealand Land Transfer Act 1952 which is equivalent to s. 177(1) of the said Code.

Section 143 of the Land Transfer Act 1952 reads:

> 143(1) Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may, if he thinks fit, apply to the Supreme Court for an order that the caveat be removed.
>
> (2) The Court, upon proof that notice of the application has been served on the caveator or the person on whose behalf the caveat has been lodged, may make such order in the premises, either *ex parte* or otherwise, as to the Court seems meet.

At page 490, Cooke J said this:

> As to standing, the more natural meaning in their context of the words of s. 143(1) "any such...registered proprietor..." appears to me to be any person who is the registered proprietor of the land at the time of the application under that section. The immediately following words "or any other person having any registered estate or interest in the estate or interest protected by the caveat" support the view that the legislation is giving a summary remedy to persons currently on the register.

Further down at page 491 he continued to state this:

> I hold that a person who is not the registered proprietor at the time when the application is made is not "Any such...registered proprietor" within the meaning of s. 143(1); and that accordingly the Court cannot entertain the present application.

It may appear to be harsh in construing s. 177(1) of the said Code as such. But courts only interpret the provisions of statutes as they stand. Indeed in the case of *Malayan Banking Bhd. v. Pendaftar Hakmilik, Negeri Pahang & Anor.* [1991] 1 MLJ 119 Lamin J. construed s. 321(3)(b) of the National Land Code as to require the proprietor to be the applicant to have the registrar's caveat cancelled as the subsection of the National Land Code so provides.

In *Cheong Kong Enterprise Co. Sdn. Bhd. v. Foong Seong Mines Ltd. & Ors.* [1969] 2 MLJ 246 the then Federal Court also made it clear the *locus standi* of the appellant in that case was governed by the provisions of the Land Code (Cap 138) either s. 326(1) or s. 327.

Anyway I do not think the plaintiff is helpless in this case. In my view s. 178 of the said Code should be available to him. Such a view has also been expressed by the learned author of the book entitled 'Caveats under the Sarawak Land Code (Cap. 81) - Law and Practice' on page 80. In fact in the case of *Philip ak. Jimmy v. Ng Moi Kiew* (*Sibu Civil Suit No. 35 of 1979*) (unreported) the personal representative of the estate of the deceased in that case invoked s. 178 of the said Code to enable her to have the transfer to herself registered.

Accordingly, I uphold the preliminary objection and hereby rule that the plaintiff has no *locus standi* to make this application under s. 177(1) of the said Code. The application of the plaintiff is therefore struck out in so far as it relates to the application under s. 177(1) of the said Code.

TEOH THEAN PENG

v.

D & C LEASING SDN. BHD.

HIGH COURT, ALOR SETAR
DATO K.C. VOHRAH J.
[BANKRUPTCY NO 29-553-92]
6 APRIL 1993

BANKRUPTCY: Creditors petition - Whether petition must be physically joined to verifying affidavit - Whether failure to annex petition to verifying affidavit renders proceedings a nullity - Whether petition must be presented before verifying affidavit is affirmed.

The judgment debtor opposed the petition to declare him a bankrupt on the grounds that:

(1) The procedure adopted to transfer the proceedings from Penangh to Alor Setar was irregular.
(2) The petition was not physically annexed to the verifying affidavit as required by the Bankruptcy Rules 1969 (the Rules).
(3) The petition must be presented before the verifying affidavit is affirmed.

Held:

[1] The language used in Form 11 of the Rules is clear and for the presentation of the petition, the petition has to be annexed to the verifying affidavit. The words used in Form 11 and rule 106 of the Rules read together with s.6(1) of the Act, show that the petition must be tied to or affixed to or stapled to the verifying affidavit, so as to avoid dispute as to what exactly is being verified.

[2] Nevertheless the proceedings are not rendered a nullity even if the said petition is not annexed to the said affidavit because the verifying affidavit which has the same title and distinctive number as the petition does verify the statements in the petition with sufficient particularity.

[3] The verifying affidavit serves a limited purpose of enabling the Registrar to investigate the petition in order for him to decide whether to seal copies of the petition and once the copies are sealed for service it is clear that the Registrar adverted to the verifying affidavit for investigation under r.108 of the Rules and that the affidavit must have borne the title and distinctive number borne by the petition itself unless the contrary can be shown.